

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALBERT M. FRANCO, JR.,)	Case No. CV 15-0601-JFW (JPR)
)	
Plaintiff,)	
)	ORDER DISMISSING ACTION FOR
vs.)	FAILURE TO PROSECUTE AND FAILURE
)	TO STATE A CLAIM
COUNTY OF LOS ANGELES et)	
al.,)	
)	
Defendants.)	
)	

Plaintiff filed pro se his civil-rights complaint on January 27, 2015, and two days later the Court granted his request to proceed in forma pauperis. On February 23, 2015, the Magistrate Judge dismissed the Complaint with leave to amend because it suffered from numerous deficiencies. She expressly warned Plaintiff that if he failed to timely file a sufficient amended complaint by March 16, 2015, his lawsuit would be subject to dismissal for the reasons stated in the order and for failure to prosecute. To date, Plaintiff has not filed an amended complaint.

Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (per

1 curiam), examined when it is appropriate to dismiss a plaintiff's
2 lawsuit for failure to prosecute. See also Link v. Wabash R.R.
3 Co., 370 U.S. 626, 629-30 (1962) ("The power to invoke
4 [dismissal] is necessary in order to prevent undue delays in the
5 disposition of pending cases and to avoid congestion in the
6 calendars of the District Courts.").

7 In determining whether to dismiss a pro se plaintiff's
8 action for failure to prosecute, a court must consider "(1) the
9 public's interest in expeditious resolution of litigation; (2)
10 the court's need to manage its docket; (3) the risk of prejudice
11 to the defendants; (4) the public policy favoring disposition of
12 cases on their merits[;] and (5) the availability of less drastic
13 sanctions." Carey, 856 F.2d at 1440 (internal quotation marks
14 omitted). Unreasonable delay creates a rebuttable presumption of
15 prejudice to the defendants that can be overcome only with an
16 affirmative showing of just cause by the plaintiff. See In re
17 Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994).

18 Here, the first, second, third, and fifth Carey factors
19 militate in favor of dismissal. In particular, Plaintiff has
20 offered no explanation for his failure to file an amended
21 complaint. Thus, he has not rebutted the presumption of
22 prejudice to Defendants. No less drastic sanction is available,
23 as Plaintiff has ceased communicating with the Court, and the
24 Court is therefore unable to manage its docket. Although the
25 fourth Carey factor weighs against dismissal – as it always does
26 – together the other factors outweigh the public's interest in
27 disposing of the case on its merits. See Ferdik v. Bonzelet, 963
28 F.2d 1258, 1261-62 (9th Cir. 1992) (upholding dismissal of pro se

1 civil-rights action for failure to timely file amended complaint
2 remedying deficiencies in caption); Baskett v. Quinn, 225 F.
3 App'x 639, 640 (9th Cir. 2007) (upholding dismissal of pro se
4 civil-rights action for failure to state claim or timely file
5 amended complaint).

6 **ORDER**

7 Accordingly, this action is dismissed under the Court's
8 inherent power to achieve the orderly and expeditious disposition
9 of cases by dismissing actions for failure to prosecute and for
10 the reasons outlined in the Magistrate Judge's February 23, 2015
11 order.

12 LET JUDGMENT BE ENTERED ACCORDINGLY.

13
14 DATED: April 16, 2015


15 JOHN F. WALTER
16 U.S. DISTRICT JUDGE

17 Presented by:

18 **JEAN ROSENBLUTH**

19 Jean P. Rosenbluth
20 U.S. Magistrate Judge
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